IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8120 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARSANSINGH @ KT TEJSINGH RAJPUT (CHAUDHARI) THRO' BROTH

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/11/2000

ORAL JUDGEMENT

1. The petitioner has challenged his detention order dated 12th July, 2000 passed by Police Commissioner, Ahmedabad City, in exercise of power vested in him under Section 3(1) of the Gujarat Prevention of Anti Social

Activities, 1985 (`PASA Act' for short) by this petition under Article 226 of the Constitution of India.

2. The order of detention was served upon the petitioner on 12th of July, 2000, and the grounds which was served upon the petitioner and placed on record indicates that the crime was registered against the petitioner in Prohibition Police Station, North Zone, vide Crime Register No. 1352 of 2000 on 9th of July, under Sections 66(1)(B), 65(A) and (E), 81, 83, 116(1)(B). Detaining authority took into consideration the papers of investigation in the above mentioned crime register and the statements of the witnesses recorded in the said investigation. Detaining Authority considered the statements of two independent witnesses, who after giving assurance of anonymity, were prepared to give statements to the Police that the petitioner was dealing in liquor and by exercising coercive measures, the petitioner and his associates wanted to hide illegal liquor in the house of one of the anonymous witnesses and when it was refused, the witness was beaten. Due to fear of the petitioner and his associates, nobody intervened and the public order was disrupted. This is the incident on 23rd of June, 2000. According to the detaining authority, the other anonymous witness stated that on 28th June, 2000 he was beaten by the petitioner and his associates on suspicion that the witness was providing information to the Police as to illegal activities of the petitioner in dealing with the liquor. Therefore, the detaining authority reached the subjective satisfaction that the petitioner was dealing in illegal liquor and due to this anti social activities, the public health

affected badly. The detaining authority further reached to the satisfaction that due to fear of the petitioner, nobody came forward either to file a complaint or to give his statement. Therefore, the detaining authority from the above material, concluded that the petitioner was "bootlegger" within the meaning of Sec. 2(b) of the PASA Act. Detaining authority also considered actions under Section 93 of the Bombay Prohibition Act. Detaining Authority came to the conclusion that by taking action under Section 93 of the PASA Act, the illegal activities of the petitioner could not be prevented forthwith. It was also stated by the detaining authority that though at the time of passing of the order, the petitioner was in

Police Custody on remand but he was likely to get bail from the court and was likely to continue his illegal and anti social activities which was obstruction to public order. The detaining authority therefore reached to the subjective satisfaction that as a last resort, the order under the PASA Act to detain the petitioner was necessary and he passed the order on 12th of July, 2000.

3. Learned Advocate Mr. N.M. Kapadia for the petitioner and learned AGP Mr. Udai R. Bhatt for the respondents were heard.

4. The order of detention in this petition came to be challenged on various grounds. It appears after scrutiny that the petition can be disposed of on the ground of non-application of mind by the detaining authority qua fact of the case and, therefore, the other grounds raised on behalf of the petitioner are not dealt with.

5. The purpose of the PASA Act is to detain a citizen without trial in certain circumstances as provided under the PASA Act. The Legislatures have also provided safeguards to such detention without trial. The subjective satisfaction of the detaining authority from the material on the record and application of mind is essential to reach the subjective satisfaction is sine qua non. The order of detention in this case is hit by non application of mind by the detaining authority. It is an admitted fact that at the time of detention, the petitioner was on police remand in the above said C.R. No. 1352 of 2000 registered against him on 9th of July, 2000. The detaining authority considered this fact by saying that even after remand the petitioner was likely to get bail from the competent court and was likely to continue his illegal activities, which is the non-application of mind of the detaining authority. The detaining authority presumed certain facts which he ought not to have presumed. Thus, the established law is that the order of detention is a last resort, and detaining authority is always duty bound to consider less drastic remedy to prevent the illegal activities of the detenu, if the same is affecting the public order.

6. In ZUBEDABIBI RASIDKHAN PATHAN vs. STATE OF GUJARAT, reported in 1995 (2) GLR 1134, Division Bench of this Court ruled that the detaining authority must consider the less drastic remedy. In that case, it was held that the order of detention was vitiated because the detaining authority did not consider the cancellation of bail of the detenu under Section 437(5) of the Cr.P.C. This view is fortified again by the Division Bench of this Court in the Letters Patent Appeal No. 1056 of 1999, which is decided on 15th of September, 1999.

7. Therefore, the non-application of mind by detaining authority is glaringly emerges two fold in this case. Firstly, the detaining authority unnecessary presumed that the petitioner was likely to be released by the competent court and was likely to continue the illegal activities in dealing with illegal liquor. Secondly, that the detaining authority is empowered to oppose bail if at all prayed by the petitioner before the competent court, but without resorting to lesser drastic action to prevent the illegal activities, the detaining authority after presuming some facts, passed order of detention, which reveals the non-application of mind on the part of the detaining authority. Learned Advocate Mr. Kapadia for the petitioner submitted that the petitioner did not prefer any bail in the above said crime registered against the petitioner and till today he is in judicial custody. The purpose, as stated above, of the PASA Act is to detain temporarily the citizen, to prevent him from acting prejudicial to the public order.

When the petitioner is in judicial custody, the question of indulging in illegal activity by the petitioner would not arise at all. For these reasons, the impugned order of detention is required to be set aside because the same is without proper application of mind and vitiated.

9. In this view of the matter, the detention order dated 12th July, 2000 passed by respondent No.1 Commissioner of Police, Ahmedabad City, against the petitioner is hereby ordered to be quashed and set aside. Petitioner - Karansingh @ K.T. Tejsingh Rajput (Chaudhari), is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. D.S. permitted.

(J.R. Vora, J.)

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